

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DAVID BOURGEOIS,
(TDCJ-CID #1379715)

Plaintiff,

vs.

LARRY CANTU, JR. *et al.*,

Defendants.

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CIVIL ACTION H-07-0685

MEMORANDUM AND OPINION

David Bourgeois, a Texas Department of Criminal Justice inmate, sued in February 2007, alleging civil rights violations resulting from retaliation and verbal harassment. Bourgeois, proceeding *pro se* and *in forma pauperis*, sues Larry Cantu, Jr., a correctional officer at the Pack I Unit.

The threshold issue is whether Bourgeois's claims are barred because of prior lawsuits he filed. by the doctrine of res judicata.

I. The Allegations in Bourgeois's Complaint

Bourgeois alleges that on October 29, 2006, Officer Cantu contaminated Bourgeois's food with floor cleaner. Bourgeois alleges that Officer Cantu was trying to poison him as an act of retaliation and that Officer Cantu has threatened to poison Bourgeois in the future. Bourgeois asks this court to prosecute Officer Cantu for his conduct.

II. Analysis

Under 28 U.S.C. § 1915A, federal courts are authorized to review, before docketing if feasible, or as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or an officer or employee of a governmental entity. The court is to dismiss any portion of the complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. Section 1915A governs this suit by a prisoner against a prison official.

A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001) (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998) (quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

Bourgeois raised virtually identical claims against the same defendant in Civil Action No. 4:06-CV-4101, which is pending on the court’s docket. *In forma pauperis* complaints may be dismissed as frivolous if they seek to re-litigate claims that assert substantially the same facts arising from a common series of events that have already been litigated by the same plaintiff. *Wilson v. Lynaugh*, 878 F.2d 846, 849 (5th Cir.), *cert. denied*, 493 U.S. 969 (1989). *Id.* A district court may dismiss as malicious a pauper's complaint that duplicates

allegations of another pending federal lawsuit filed by the same plaintiff. *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993).

Bourgeois filed this case less than two months after filing Civil Action No. 4:06-CV-4101. The claims in the above-styled action are dismissed as malicious because they duplicate claims currently pending before the court.

III. Conclusion

Bourgeois's motion to proceed *in forma pauperis*, (Docket Entry No. 3), is granted. The action filed by David Bourgeois (TDCJ-CID Inmate #1379715) is dismissed as malicious because the claims are duplicative of those currently before the court in 4:06-4101. His claims are dismissed with prejudice under 28 U.S.C. § 1915A(b)(1).

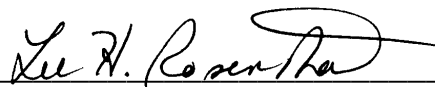
The TDCJ-CID must continue to deduct twenty percent of each deposit made to Bourgeois's inmate trust account and forward payments to the court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

- (1) the TDCJ - Office of the General Counsel, Capitol Station, P. O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159;
- (2) the Inmate Trust Fund, P. O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and

(3) the District Clerk for the Eastern District of Texas, 211 West Ferguson,
Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED on February 28, 2007, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line. The signature is fluid and cursive, with a large loop at the end of the last name.

Lee H. Rosenthal
United States District Judge